

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of	:	
	:	
	:	CFTC Docket No. 97-12
CURTIS MCNAIR ARNOLD and	:	
LONDON FINANCIAL, INC.	:	ORDER
	:	

In August 2000, William Sumner Scott and the Scott Law Firm, P.A. (“Scott”), former counsel for respondents Arnold and London Financial, Inc. (“London Financial”),¹ sought judicial review of the Commission’s October 17, 1997 decision affirming an Administrative Law Judge’s (“ALJ”) order debaring Scott from serving as Arnold’s and London Financial’s counsel in this proceeding. *See In re Arnold*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,174 (CFTC October 17, 1997) (“*Arnold*”).² On November 20, 2000, the United States Court of Appeals for the Eleventh Circuit granted the Commission’s motion to remand this matter for additional proceedings before the Commission. On November 27, 2000, Scott filed a motion requesting that the Commission vacate its *Arnold* decision and remand this matter to an ALJ for further proceedings on his debarment. On December 7, 2000, the Division of Enforcement (“Division”) filed a response that urged the Commission to resolve the material issues on the current record.

¹ Arnold and London Financial settled their dispute with the Commission on August 14, 2000. On the same day, the presiding Administrative Law Judge dismissed the complaint against respondents in light of the settlement. Consequently, they are no longer parties to this proceeding.

²The ALJ issued a bench ruling but did not issue a written decision when he debarred Scott in November 1997. As explained in *Arnold*, the record indicates that the ALJ concluded that debarment was appropriate because, in his view, the record showed that Scott willfully made two misleading statements in a motion filed in August 1997.

The Commission recently gave detailed consideration to issues relating to the appropriate standards and procedures for determining whether counsel should be debarred from representing a party in an enforcement proceeding. *In re Global Minerals and Metals Corp.*, [1999-2000 Transfer Binder] Comm. Fut. L. Rep. ¶ 28,189 (CFTC July 13, 2000) (“*Global Minerals*”). *Global Minerals* acknowledged that by affirming the ALJ’s debarment order, the *Arnold* decision had “either expressly or implicitly considered and resolved” issues about the applicable standards and procedures, but concluded that clarification was necessary because the guidance provided in *Arnold* was “inadequate” due to its “brevity and narrow focus.” *Id.* at 50,230. In the context of *Global Minerals*, the Commission had no occasion to comment on whether the result in *Arnold* could be squared with its clarified standards and procedures. Nevertheless, because *Global Minerals* was controlling precedent at the time the ALJ issued his decision resolving the remaining issues in the *Arnold* matter, Scott was entitled to seek review of the ALJ’s debarment order under the clarified standards and procedures.

It is not surprising that the standards and procedures underlying the ALJ’s debarment order against Scott are not fully compatible with those mandated by *Global Minerals*. As the *Global Minerals* decision noted, not only was there no Commission precedent interpreting Rule 10.11’s debarment provision at the time the ALJ debarred Scott, neither the rule’s language nor its regulatory history provided a “clear guide to the drafters’ intent.” *Global Minerals* at 50,231. The absence of guidance apparently led the ALJ to interpret the requirements for a debarment proceeding under Rule 10.11 as broadly comparable to those governing the enforcement of the American Bar

Association's Model Rules of Professional Conduct.³ By emphasizing a presiding officer's wide latitude in conducting the proceedings before him, the Commission's *Arnold* decision implicitly blessed the ALJ's interpretation. In *Global Minerals*, however, the Commission concluded that the better analogy was to the requirements applicable in a federal court proceeding to sanction criminal contempt pursuant to 18 U.S.C. §401. *Global Minerals* at 50, 231.

In this regard, *Global Minerals* specifically held that debarment was not appropriate in the absence of a finding that the alleged misbehavior "actually obstructed the administration of justice by delaying the proceedings, making more work for the judge, inducing error, or imposing costs on the parties." *Global Minerals* at 50,231. In addition, it required that presiding officers make all necessary findings under the "clear and convincing evidence" standard. Neither the ALJ's bench ruling nor the Commission's *Arnold* decision addresses these requirements adequately.

Given our decision in *Global Minerals*, we would ordinarily remand this matter to the ALJ for revised fact-finding. In the circumstances presented, however, such a remand would amount to a futile waste of time and resources.⁴ Consequently, we vacate both the

³ See Transcript of the September 10, 1997 Hearing Conference at 7-8.

⁴As noted above, this proceeding has been dismissed as to all respondents. Consequently, determining whether Scott should be debarred from representing a party in this proceeding could not result in any effective sanction. In these circumstances, any proceeding to adjudicate the propriety of Scott's conduct would have to be brought independently and conducted under the Commission's Part 14 Rules governing attorneys who practice before the Commission.

ALJ's bench ruling and the Commission's *Arnold* decision and dismiss all proceedings affecting Scott.

IT IS SO ORDERED.

By the Commission (Chairman RAINER, and Commissioners HOLUM, SPEARS, and NEWSOME)(Commissioner ERICKSON, dissenting).

Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission

Dated: January 9, 2001

Dissenting Opinion of Commissioner Thomas J. Erickson to the Commission's Order in the Matter of Curtis McNair Arnold, et al., CFTC Docket No. 97-12

This matter involves a disciplinary sanction taken against William Sumner Scott, the attorney for respondents in the above-captioned matter. In the underlying matter, a Commission Administrative Law Judge found that Scott had misled him in a motion seeking leave to file an out-of-time answer to the Commission's administrative complaint. In a bench ruling, the ALJ debarred Scott from the *Arnold* matter. Scott appealed the ALJ's order, but the Commission affirmed the ALJ's findings and sanction. Subsequently, Scott's motion for reconsideration was denied. Scott then pursued his appeal with the Court of Appeals for the Eleventh Circuit. On the Commission's own motion, that court remanded the matter to the Commission for further proceedings in light of the recently decided case, *In re Global Minerals & Metals Corp.* In the interim, the *Arnold* respondents had settled all claims with the Commission, effectively putting an end to the case from which Scott was debarred.

I respectfully dissent from the majority's decision to vacate and dismiss the ALJ's bench ruling and the Commission's decision affirming that ruling. The majority fails to examine Scott's conduct in light of the *Global Minerals* standard. The Eleventh Circuit remanded this matter for further consideration "in light of" the *Global Minerals* case. Accordingly, the Commission should either (1) evaluate Scott's conduct in light of the *Global* standard – as it did with the attorney conduct at issue in *Global* – and either affirm or reverse the ALJ's sanctioning order, or (2) if it were to determine that there was an inadequate record to affirm or reverse, remand the matter to the ALJ for further hearing. Mr. Scott was found to have made misleading statements to a Commission ALJ,

and the sanction based on that finding was affirmed by the Commission. The Commission adopted the *Global* standard in order to evaluate claims of misconduct just such as this and, where necessary, to administer sanctions sufficient to punish culpable parties and discourage future misconduct. By declining to perform the analysis dictated by *Global* – and indeed vacating its previous order – the majority fails to address the conduct at issue and does little to discourage inappropriate conduct in the future.

Commissioner Thomas J. Erickson

Date